

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17770
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On February 2, 2000, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of Idaho individual income taxes in the amount of \$202 for 1993, \$43 for 1995, \$362 for 1996, and \$2,341 for 1997.

The taxpayer's representative (POA) filed a timely protest and petition for redetermination of the refund denials. He did not request a hearing or submit additional information. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

Tax Commission records showed no evidence that the taxpayer's 1993 through 1997 Idaho income tax returns had been filed. Therefore, on February 2, 2000, the Tax Commission's Tax Discovery Bureau issued a Notice of Deficiency Determination (NODD) to the taxpayer. The taxpayer did not appeal the determination.

Idaho Code § 63-3045B(1) states:

63-3045B. Final decisions of the commission. (1) If a taxpayer does not file a protest within the sixty-three (63) day period allowed, the notice of deficiency of the tax commission becomes final on the day following the end of the protest period.

Subsequent to the taxpayer's NODD becoming final, the taxpayer paid the assessment in full.

On June 11, 2003, the taxpayer submitted completed Idaho individual income tax returns for the years 1995 and 1996 and, on September 9, 2003, he submitted returns for 1993 and 1997. RevOp sent the taxpayer a letter followed by a NODD stating refunds could not be issued because

the returns were filed more than three years after the extended due date. The POA protested, and the entire file was transferred to the Legal/Tax Policy Division for administrative review.

In the POA's letter, he explained that he did not agree with the following statement made in the NODD: "You filed your amended return more than three (3) years after the extended due date. Taxpayers cannot receive a refund if they file their return more than three (3) years after the extended due date." He quoted Idaho Code § 63-3072(d) as follows:

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. (Emphasis added).

The POA explained his position that three years had not passed since the taxpayer filed his returns; therefore, the taxpayer is entitled to a refund.

The POA relies on a subsection of Idaho Code § 63-3072 that addresses taxable years that "have been adjusted as a result of a final federal determination." The taxable years at issue were not adjusted by a federal determination. Idaho Code § 63-3072(b) addresses other claims for credit or refund:

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

The differences in subsections (b) and (d) do not have an effect on the time allowed for claiming a refund or credit.

Idaho Code § 63-3072(k) states:

(k) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

Because the taxpayer did not file actual returns as required by law, the NODD issued on February 2, 2000 became the taxpayer's returns at the close of the 63-day protest period or April 5, 2000. A claim for credit or refund of the tax, penalty, and interest paid to satisfy the assessments was required to be claimed before April 5, 2003. The taxpayer did not make a claim for a refund until July 11, 2003.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated November 25, 2003, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2004, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
